

OFFICE OF ADMINISTRATIVE LAW

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WILLIAM L. GAUSEWITZ
Director



**NOTICE OF PROPOSED RULEMAKING
AMENDMENT TO TITLE 1, CA CODE OF REGULATIONS REGARDING
ENFORCEMENT OF SECTION 11340.5 OF THE GOVERNMENT CODE**

NATURE OF PROCEEDING

NOTICE IS HEREBY GIVEN that the Office of Administrative Law (OAL) is proposing to take the action described in the Informative Digest.

A public hearing regarding this proposal is not currently scheduled. However, any interested person or duly authorized representative may request, no later than 15 days prior to the close of the written comment period that a public hearing be scheduled.

Following the public hearing, if one is requested, or following the written comment period, if no public hearing is requested, the Office of Administrative Law may thereafter adopt the proposals substantially as described below or may modify the proposals if the modifications are sufficiently related to the original text. With the exception of technical or grammatical changes, the full text of any modified proposal will be available for 15 days prior to its adoption from the person designated in this Notice as contact person and will be mailed to those persons who submit written comments related to this proposal, or who provide oral testimony if a public hearing is held, or who have requested notification of any changes to the proposal.

Notice is also given that any interested person, or his or her authorized representative, may submit written comments relevant to the proposed regulatory action to the

Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento CA, 95814.

Comments may also be submitted by facsimile (FAX) at (916) 323-6826 or by e-mail to staff@oal.ca.gov. Comments must be submitted prior to 5:00 p.m. on November 22, 2006.

AUTHORITY AND REFERENCE

Pursuant to the authority vested by Sections 11342.4 of the Government Code, and to implement, interpret or make specific section 11340.5 of the Government Code, the Office of Administrative Law is considering changes to Division 1 of Title 1 of the California Code of Regulations as follows: Amendment of Chapter 2, to modify procedures by which OAL evaluates and responds to petitions alleging the use of underground regulations by state agencies.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Government Code 11340.5 permits OAL to evaluate whether a state agency is employing an underground regulation. Regulations adopted by OAL to implement, interpret, and make specific this section provide that OAL shall make this evaluation pursuant to petitions submitted by interested persons. OAL has only two options to dispose of a petition; it may decline the petition and advise the petitioner that the declination in no way reflects upon the substance of the petition, or it may accept the petition and issue a formal determination.

The broad objective of this proposal is to allow OAL, in reviewing petitions alleging the use of underground regulations, to issue summary disposition letters explaining why a challenged rule is not an underground regulation without requiring a full review and issuance of a formal determination. Summary disposition letters may be issued only if the facts make it clear that the challenged rule is not an underground regulation. Summary disposition letters would not be permitted in order to determine that a challenged rule is an underground regulation.

The proposal would also modify the time limits for evaluating petitions alleging the use of underground regulations. The current regulations allow 30 days for OAL to evaluate a petition before deciding whether to accept it or decline it. The current regulations require issuance of a determination not more than 150 days following publication of an accepted petition. The proposal would allow 60 days instead of 30 for OAL to decide whether to accept or decline a petition. It would reduce the time for issuing a determination from 150 days to 120 days. The effect of this change is to allow more time for OAL to evaluate petitions prior to deciding whether or not to accept them. Because the proposal also reduces the amount of time available to OAL following acceptance of a petition, total time from receipt of a petition to issuance of a determination is not changed.

Finally, the proposal would amend current regulations to provide that public comments received regarding a petition that has been accepted for issuance of a formal determination may be disregarded if they are not received within 45 days of the publication of the petition in the California Regulatory Notice Register. This provision defines the time period during which the public may submit comments as a matter of right (within 45 days) but it does not prohibit OAL, at its discretion, from considering comments received after the 45 day deadline.

There are no comparable provisions of federal law related to this proposal.

LOCAL MANDATE

This proposal does not impose a mandate on local agencies or school districts.

FISCAL IMPACT ESTIMATES

This proposal does not impose costs on any local agency or school district for which reimbursement would be required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code. This proposal does not impose other nondiscretionary cost

or savings on local agencies. This proposal does not result in any cost or savings in federal funding to the state.

COSTS OR SAVINGS TO STATE AGENCIES

No additional costs or savings to state agencies are anticipated.

BUSINESS IMPACT/SMALL BUSINESSES

The OAL has made an initial determination that the proposed regulatory action would have no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The proposal does not affect small businesses as defined by section 11342.610. The determination that the proposal would not affect small business is based upon the fact that the proposal does nothing except modify the manner in which OAL responds to petitions alleging the use of underground regulations. Provisions of current regulations relating to petitioners are not significantly changed.

ASSESSMENT REGARDING EFFECT ON JOBS/BUSINESSES

The OAL has determined that this regulatory proposal will not have any impact on the creation of jobs or new businesses or the elimination of jobs or existing businesses or the expansion of businesses in the State of California.

COST IMPACTS ON REPRESENTATIVE PERSON OR BUSINESS

The OAL is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

EFFECT ON HOUSING COSTS: None

ALTERNATIVES

The OAL must determine that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the agency's attention, would be more effective in carrying out the purpose for which the adoption of this regulation is proposed, or would be as effective as and less burdensome to affected private persons than the proposed action.

CONTACT PERSONS

Inquiries concerning the proposed adoption of this regulation and written comments may be directed to:

Bill Gausewitz
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-6221

or

Melvin Fong
Office of Administrative Law
300 Capitol Mall, Suite 1250
Sacramento, CA 95814
(916) 323-8915

INITIAL STATEMENT OF REASONS AND INFORMATION

The OAL has prepared an initial statement of the reasons for the proposed action and has available all the information upon which the proposal is based.

TEXT OF PROPOSAL

Copies of the exact language of the proposed regulations and of the initial statement of reasons, and all of the information upon which the proposal is based, may be obtained upon request from the Office of Administrative Law at 300 Capitol Mall, Suite 1250, Sacramento, CA 95814.

These documents may also be viewed and downloaded from the OAL website at www.oal.ca.gov.

AVAILABILITY AND LOCATION OF THE FINAL STATEMENT OF REASONS AND RULEMAKING FILE

All the information upon which the proposed regulations are based is contained in the rulemaking file which is available for public inspection by contacting the person named above.

You may obtain a copy of the final statement of reasons once it has been prepared, by making a written request to the contact person named above.

WEBSITE ACCESS

Materials regarding this proposal can be found at www.oal.ca.gov.